

REMARKS

This Response is in response to the Office Action dated June 5, 2006. Claims 1-44 are pending in the present application.

In the above-mentioned Office Action, the Examiner stated that claims 1-44 are subject to a restriction requirement under 35 U.S.C. § 121. In particular, the Examiner stated that

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-43, drawn to a magnetic element, classified in class 257, subclass 295**
- II. Claim 44, drawn to a method of providing a magnetic element, classified in class 438, subclass 3. . .**

Inventions II and I are related as [a] process of making [a product] and [the] product made.

The Examiner further distinguished three different species: Species I: claims 1-7 and 11; Species II: Claims 8-10 and 12-16; and Species III: claims 27-43.

Applicant hereby elects claims 1-43 and Species I, with traverse. Applicant respectfully submits that the layers claims in claims 8-10 and 12-16 as well as claims 27-43 are of the same species as claim 1. Applicant notes that independent claim 1 recites a magnetic element that includes a pinned layer, a free layer, and a spacer layer. Similarly, independent claim 8 recites a magnetic element that includes a (first) pinned layer, a nonmagnetic spacer layer, and a free layer. However, claim 8 specifies that the spacer layer is conductive and nonmagnetic. Claim 8 further recites that the magnetic element includes two *additional* layers: a barrier layer and a (second) pinned layer. Although certain characteristics of the pinned layer, free layer, and spacer layer differ in claims 1 and claims 8-10 and 12-16, Applicant respectfully submits that the magnetic element of claims 8-10 and 12-16 are analogous to the magnetic element recited in claim 1. Similarly, claims 27-43 recite a magnetic element that includes a (first) pinned layer, a (first)

nonmagnetic spacer layer, a (first) free layer, a second free layer, and a second pinned layer.

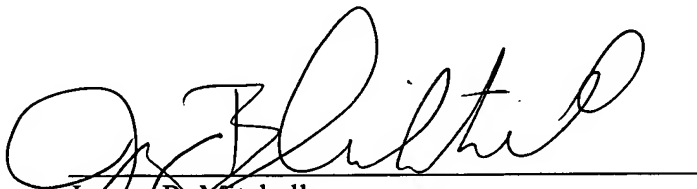
Thus, claims 27-43 recite magnetic elements that are analogous to the magnetic element of claim 1 but also include *additional* layers (the combination of the second free layer, the second spacer layer and the second pinned layer or the combination of the first free layer, the first spacer layer and the first pinned layer). Thus, the magnetic elements recited in claims 27-43 have pinned layer(s), spacer (layers), and free layer(s). Although characteristics of the individual layers differ, Applicant respectfully submits that the magnetic elements of claims 27-43 are analogous to the magnetic elements of claims 1-7 and 11. Accordingly, Applicant respectfully submits that claims 1-43 are not distinct species.

In view of the foregoing, Applicant's attorney believes that this application is in condition for allowance. Should any unresolved issues remain, Examiner is invited to call Applicant's attorney at the telephone number indicated below.

Respectfully submitted,

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